

Please note: These minutes have not been reviewed or approved by the Board of Medicine and Surgery.

MINUTES OF THE MEETING
OF THE
BOARD OF MEDICINE AND SURGERY

December 15, 2006

The meeting of the Board of Medicine and Surgery was called to order by Chairman Michael Sitorius, MD at 9:04 a.m. on Friday, December 15, 2006, at Staybridge Suites, Staybridge Room, 2701 Fletcher Ave, Lincoln, Nebraska. The following members answered to roll call:

Michael Sitorius, Chairman
David Dryburgh, Vice-Chairman
Carl V. Smith, MD, Secretary
Larry E. Bragg, MD
Samuel L. Brown, PhD
Randy T. Kohl, MD
Vonn E. Roberts, MD
Arthur A. Weaver, DO

Absent: NONE

A quorum was present and the meeting convened.

Also present to participate in the meeting: Terri Nutzman, Assistant Attorney General; Robert Semerena, Investigations Division Administrator; Michael Grutsch, Program Manager, Investigations Division, Susanne Rydberg, Investigator; Patricia Lemke, Investigator, Becky Wisell, Section Administrator, Credentialing Division; Vicki Bumgarner, Credentialing Coordinator, Credentialing Division; Meegan Dyrland, Credentialing Specialist, Credentialing Division.

ADOPTION OF AGENDA

Kohl moved, seconded by Smith, to adopt the agenda. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

APPROVAL OF MINUTES OF THE MEETING FROM NOVEMBER 3, 2006

Smith moved, seconded by Kohl, to approve the minutes of the November 3, 2006 meeting. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

COMPLIANCE WITH TERMS OF PROBATION: A RETROSPECTIVE STUDY OF DISCIPLINED HEALTH PROFESSIONALS IN NEBRASKA - JUAN P. RAMIREZ, PHD & MELISSA M. DROZDA, MS(C)

Juan Ramirez and Melissa Drozda presented information to the Board regarding the study done to explore the influence of selected variables on disciplined health professionals and their compliance with prescribed terms of probation. The study was done for a period of 9 years with demographic and probationary status data of health professionals in Nebraska. The study involved the professions of Nursing, Pharmacy, Medicine and Dentistry and used public document records and databases. The pair provided recommendations on measures that may help prevent disciplinary actions from occurring in the future.

Duane Newland and Jeff Newman, Investigators, entered the meeting at 9:20 p.m.

Loretta Bennet, Investigator, entered the meeting at 9:22 p.m.

Marletta Stark, Investigator, entered the meeting at 9:24 p.m.

Please note: These minutes have not been reviewed or approved by the Board of Medicine and Surgery.

Board of Medicine and Surgery
Minutes of the Meeting
December 15, 2006

Les Spry, Vice-Chair of the Board of Health introduced himself to the Board. Spry briefly discussed comments that were shared when the Governor attended the recent Board of Health meeting. Board of Health members expressed concerns they have heard from Professional members (from various professions) about the need for more resources, specifically staff, in Investigations and Credentialing Divisions.

INVESTIGATIONAL REPORTS

Smith moved, seconded by Kohl, to go into closed session for the purpose of hearing investigational reports. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried and the meeting went into closed session at 9:53 a.m.

Bragg recused himself at 10:52 a.m.

Bragg returned to the meeting at 10:59 a.m.

Roberts recused himself at 10:59 a.m.

Roberts returned to the meeting at 11:01 a.m.

Roberts recused himself at 11:09 a.m.

Roberts returned to the meeting 11:11 a.m.

The meeting returned to open session at 11:47 a.m.

PHYSICIAN APPLICATION REVIEW & DISPOSITION

Initial Licensure

Joe Parkey, MD-Smith moved, seconded by Dryburgh, to approve issuance of a license to Parkey. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

James Pemberton, MD-Smith moved, seconded by Dryburgh, to approve issuance of a license to Pemberton. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Wesley Beauregard, MD-Kohl moved, seconded by Smith, to approve issuance of a license to Beauregard. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Eric Carbonell, MD-Smith moved, seconded by Kohl, to recommend allowing Carbonell to withdraw his application because the application is not complete. Carbonell requested to withdraw because the job offer that was initially the reason for applying in Nebraska was no longer available. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Nicholas Connolly, MD-Kohl moved, seconded by Bragg, to approve issuance of a license to Connolly. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Scott Geiger, MD-Dryburgh moved, seconded by Smith, to approve issuance of a license to Geiger. Voting aye: Dryburgh, Bragg, Roberts. Voting nay: Brown, Kohl, Sitorius, Smith. Abstain: Weaver. Motion failed.

Please note: These minutes have not been reviewed or approved by the Board of Medicine and Surgery.

Board of Medicine and Surgery
Minutes of the Meeting
December 15, 2006

Smith moved, seconded by Brown, to deny a license to Geiger. Voting aye: Sitorius, Brown, Kohl, Smith. Voting nay: Dryburgh, Bragg, Roberts, Weaver. Motion failed. The chair tabled a decision on the application until the next meeting.

The Board reconsidered the application of Connolly. Smith moved, seconded by Dryburgh, to rescind the previous motion on Connolly. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Smith moved, seconded by Dryburgh, to table a decision on Connolly's application until more information can be obtained. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Shashikant Kulkarni, MD- Smith moved, seconded by Kohl, to approve issuance of a license to Kulkarni. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried

Richard Mickle, MD-Dryburgh moved, seconded by Smith, to table this application until more information can be obtained. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Raafat Iskander, MD-Kohl moved, seconded by Bragg, to approve issuance of a license to Iskander. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Reinstatement

Timothy Narjes, MD-The Board previously issued Narjes a five year probationary Temporary Educational Permit (TEP) because of a history of alcohol dependency, on July 9, 2004 and Narjes later was issued a probationary Physician license for the same reason on September 20, 2005. Narjes recently submitted a Petition for Reinstatement of License without Limitation. Smith moved, seconded by Bragg, to deny the Petition for Reinstatement of License without Limitation because Narjes has not provided evidence of sufficient change in his circumstances since the imposition of the probation to warrant removal or change in the Probationary terms or conditions. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

James Craig, MD-Reinstatement from nondisciplinary revocation for failure to pay renewal fees over one year. Smith moved, seconded by Kohl, to reinstate Craig's license. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Paul Rodriguez, MD-Dryburgh moved to reinstate Rodriguez's license with the limitation that he could not supervise Physician Assistants. There was no second.

Smith moved, seconded by Roberts, to deny reinstatement of a license to Rodriguez. The reason for the denial was discipline taken against Rodriguez's license in several other states. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

PHYSICIAN ASSISTANT APPLICATION REVIEW & DISPOSITION

Application to Reinstate a Physician Assistant License after Non-Disciplinary Revocation Within One Year

Andrew Beguin, PA-Smith moved, seconded Kohl, to table the application for Beguin. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Please note: These minutes have not been reviewed or approved by the Board of Medicine and Surgery.

Board of Medicine and Surgery
Minutes of the Meeting
December 15, 2006

Application to Supervise a Physician Assistant

John Campbell, MD-Smith moved, seconded by Roberts, to approve the application. Dr. Campbell was Darwin Brown's supervising physician up until October 1, 2005 when the license was terminated because

Campbell was serving in Iraq at the time of renewal in 2005. Mr. Brown has been providing medical services since the termination of the supervising physician certification. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Application to Supervise a Third Physician Assistant

Shiuvaun Jaeger, MD-Kohl moved, seconded by Smith, to approve Jaeger to supervise a third PA-Carl Wooffer. The community of Benkelman lost one of their long-time healthcare providers about two years ago and has not been able to retain a second physician since this time. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Medical Board Recommendation for Appointment to Physician Assistant Committee

Weaver moved, seconded by Smith, to recommend to the Board of Health that Kohl remain as the Physician member of the Physician Assistant Committee until his term expires at the end of 2007. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

DISCIPLINARY INFORMATION – ACTIONS TAKEN & PENDING

The Board reviewed actions taken and pending since the last meeting.

FINANCIAL REPORT

The Board reviewed the status of the budget as of October 31, 2006.

LEGISLATION FOR 2007 – UNIFORM LICENSING LAW REWRITE

Wisell explained that the Department is in the final stages of preparing the Uniform Licensing Law Rewrite bill for introduction in the 2007 Legislative session. She informed the Board that the endorsement section was eliminated. They felt this added too much complication to the rewrite and might delay it when the Legislature reviews it. A section was added that gives boards the authority to set out requirements for licensure and the passing score which must be obtained on examinations for licensure. Each individual board will also determine if a state exam is acceptable in lieu of a national exam.

According to the Board's instruction at the previous meeting, Wisell had informed the medical schools in Nebraska about the language that was added to the draft regarding citizenship: "A credential may only be issued to a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a professional or commercial license under 42 U.S.C. 1621, or a nonimmigrant whose visa for entry is related to such employment in the United States".

Both medical schools, the University of Nebraska Medical Center and Creighton University Medical Center, wrote letters to the Department regarding this language and the hindrance adding this provision would present to them and their residency programs. The Department deferred this matter to the Governor's Policy Research Office since they were the ones to request this addition.

The final draft of the rewrite will be available on the website soon. Wisell asked that the Board members look over their practice act to make sure everything looks as they want it.

Please note: These minutes have not been reviewed or approved by the Board of Medicine and Surgery.

Board of Medicine and Surgery
Minutes of the Meeting
December 15, 2006

FEDERATION OF STATE MEDICAL BOARD ISSUES

Proposal For Resolution

The Board discussed the draft of Roberts' resolution, "Use of Term 'Board Certified'". The Board gave suggestions to Roberts to justify this resolution. He will revise and bring to the next meeting.

Call for Nominations

Weaver moved, seconded by Dryburgh, to nominate Kohl to the slate of candidates for the FSMB Board of Directors. Voting aye: Sitorius, Dryburgh, Bragg, Brown, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

Weaver moved, seconded by Roberts, to have the Board send a letter of support to recommend Dryburgh be appointed to a committee or to run for an elected committee position. Voting aye: Sitorius, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: None. Motion carried.

FORMATION OF WORK GROUP TO RECOMMEND PROCEDURE FOR REVIEW OF PRACTICE QUESTIONS

At the November meeting, the Board discussed the many new procedures that are becoming available and the importance of establishing the framework to deal with these questions in the future. They decided to establish a work group to study this matter. Sitorius offered to chair this committee, and would like 2-3 other Board members involved. Brown and Kohl volunteered to be members of this committee as well.

REPORT ON CITIZENS ADVOCACY CENTER 2006 ANNUAL MEETING – SAMUEL L. BROWN, PHD

Brown discussed the main topics and focus of the Citizens Advocacy Center (CAC) 2006 Annual Meeting. The view of the CAC is that public members are charged with advancing the public interest and that this interest lies in the process of the Boards. The main issue of the meeting was transparency. The CAC feels the public should be allowed to have all information to make an informed decision about the health practitioners they see. Brown thinks it would be beneficial for more professional members to attend this meeting. He feels that more productive decisions could take place with opinions from both public and professional members present.

REQUEST FOR CLARIFICATION OF BOARD POLICY REGARDING PRESCRIBING AND THE PHYSICIAN – PATIENT RELATIONSHIP

The Board received a letter requesting clarification of the Board Policy regarding prescribing and Physician-Patient Relationship. The policy states that it is unprofessional conduct for a physician to initially prescribe drugs to an individual without first establishing a proper physician-patient relationship.

The Medicine & Surgery regulations state that it is unprofessional conduct to: 1) Prescribe drugs to an individual the physician has never met based solely on answers to questions provided by the internet, telephone or fax, and 2) Prescribe drugs to an individual without first establishing a proper physician-patient relationship. A proper physician-patient relationship requires that the physician make an informed medical judgment upon examination, diagnosis, and formulation of a treatment plan and that arrangements exist to insure availability of the physician or physician coverage for follow-up patient care.

Smith moved, seconded by Roberts, to reaffirm the current policy and regulations on this matter. Voting aye: Sitorius, Bragg, Brown, Kohl, Roberts, Smith, Weaver. Voting nay: Dryburgh. Motion carried.

Please note: These minutes have not been reviewed or approved by the Board of Medicine and Surgery.

Board of Medicine and Surgery
Minutes of the Meeting
December 15, 2006

CORRESPONDENCE REGARDING TIMEFRAME FOR COMPLETION OF CRIMINAL BACKGROUND CHECKS FOR TEMPORARY EDUCATIONAL PERMITS

The Board discussed a letter sent by the Associate Dean for Graduate Medical Education at the University of Nebraska Medical Center. The Dean has requested the issuance of a 30 or 60 day temporary educational permit prior to completion of the criminal background check because of the delay the criminal background checks are putting on the start date of physicians starting their residencies on July 1.

Wisell stated that the Department has no statutory authority to issue 30 or 60 day temporary educational permits. Sitorius will write the Dean a letter addressing their concerns.

UPDATE ON PAPERLESS MEETINGS PROJECT

Wisell shared with the Board that the Department's Information Systems & Technology Department will be giving staff demonstrations on a program in Lotus Notes that could possibly work as a paperless meeting program. Dryburgh would like to attend this demonstration.

PHARMACEUTICAL CARE AGREEMENTS

The Board reviewed the pharmaceutical care agreements submitted by Scott Straka, MD and Dana Damrow, PharmD, RPH.

Sandy Johnson, President of the Nebraska Medical Association (NMA) discussed the "I'm sorry" legislation that will be introduced in the 2007 Legislative Session. This legislation would make it so that a physician statement to a patient saying "I'm sorry" for an event could not be used as evidence against the physician in a court of law.

Johnson also informed the Board that the NMA has prepared a guide book on discipline that was devised with the help of Robert Semerena.

ADJOURNMENT

There being no further business, the meeting adjourned at 2:02 p.m.

Respectfully submitted,

Carl V. Smith, Secretary
Board of Medicine and Surgery